



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC22-17-000]

#### Commission Information Collection Activity (FERC-549); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC-549 (NGPA Section 311 Transactions and NGA Blanket Certificate Transactions).

**DATES:** Comments on the collections of information are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments (identified by Docket No. IC22-17-000) on FERC-549 by one of the following methods:

Electronic filing through <https://www.ferc.gov> is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.

- Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at (866) 208-3676 (toll-free).

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by e-mail at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), or by telephone at (202) 502-8663.

**SUPPLEMENTARY INFORMATION:**

*Title:* NGPA Section 311 Transactions and NGA Blanket Certificate Transactions

*OMB Control No.:* 1902-0086

*Type of Request:* Three-year extension of the FERC-549 information collection requirements with a revision to account for the differences between filings seeking initial approval and those disclosing a change in circumstances.

*Abstract:* FERC-549 is required to implement portions of the following statutory provisions: (1) Section 311 of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3371); (2) Section 4(f) of the Natural Gas Act (NGA) (15 U.S.C. 717c(f)); and (3) Section 7 of the NGA (15 U.S.C. 717f). The reporting requirements for implementing these provisions are contained in 18 CFR Part 284.

**Transportation by Interstate Pipelines for Intrastate Pipelines and Local Distribution Companies**

Under section 311(a)(1) of the NGPA and 18 CFR 284.101 and 284.102, any interstate pipeline may transport natural gas without prior Commission approval “on behalf of” an intrastate pipeline or a local distribution company (LDC). The regulation at 18 CFR 284.102(d) provides that the transportation is not “on behalf of” an intrastate pipeline or an LDC unless one of three conditions is met:

- (1) The interstate pipeline or LDC has physical custody of and transports the natural gas at some point;
- (2) The intrastate pipeline or LDC holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as a local distribution company; or
- (3) The gas is delivered at some point to a customer that either is located in an LDC’s service area or is physically able to receive direct deliveries of gas from an intrastate pipeline, and the LDC or intrastate pipeline certifies that it is on its behalf that the interstate pipeline is providing transportation service.

The certification requirement in the third condition described at 18 CFR 284.102(d)(3) is included in the burden table (below) as part of the information collection activity labeled “Transportation by Pipelines.” Before commencing service as described in paragraph (d)(3), the interstate pipeline that is providing the transportation must receive certification from the pertinent LDC or intrastate pipeline consisting of a letter from the intrastate pipeline or LDC authorizing the interstate pipeline to ship gas on its behalf, and sufficient information to verify that the service qualifies under 18 CFR 284.102.

**Transportation by Intrastate Pipelines for Interstate Pipelines or LDCs Served by an Interstate Pipeline**

Under section 311(a)(2) of the NGPA and 18 CFR 284.122 and 284.123, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of any interstate pipeline or any LDC served by an interstate pipeline. No rate charged for such transportation may exceed a fair and equitable rate. The filing requirements described below are included in the burden table (below) as part of the information collection activity labeled “Transportation by Pipelines.”

The regulation at 18 CFR 284.123(b) provides that intrastate gas pipeline companies must file for Commission approval of rates for services performed in the interstate transportation of gas. An intrastate gas pipeline company may elect to use rates contained in one of its then effective transportation rate schedules on file with an appropriate state regulatory agency for intrastate service comparable to the interstate service or file proposed rates and supporting information showing the rates are cost based and are fair and equitable. It is the Commission policy that each pipeline must file at least every five years to ensure its rates are fair and equitable. Depending on the business process used, either 60 or 150 days after the application is filed, the rate is deemed to be fair and equitable unless the Commission either extends the time for action, institutes a proceeding or issues an order providing for rates it deems to be fair and equitable.

The regulation at 18 CFR 284.123(e) requires that within 30 days of commencement of new service any intrastate pipeline engaging in the transportation of gas in interstate commerce must file a statement that includes the interstate rates and a description of how the pipeline will engage in the transportation services, including operating conditions. If an intrastate gas pipeline company changes its operations or rates it must amend the statement on file with the Commission. Such amendment is to be filed not later than 30 days after commencement of the change in operations or change in rate election.

## **Initial Approval of Market-Based Rates for Storage**

Section 4(f) of the NGA authorizes the Commission to permit natural gas storage service providers to charge market-based rates for storage, subject to conditions and requirements set forth in the statute. The Commission implements this authority under 18 CFR 284.501 through 284.505. An applicant may apply for market-based rates by filing a request for a market-power determination that complies with the following:

(a) The applicant must set forth its specific request and adequately demonstrate that it lacks market power in the market to be served, and must include an executive summary of its statement of position and a statement of material facts in addition to its complete statement of position. The statement of material facts must include citation to the supporting statements, exhibits, affidavits, and prepared testimony.

The regulation at 18 CFR 284.503 requires that an application to charge market-based rate for storage services must include the following information:

- (1) Statement A--geographic market. This statement must describe the geographic markets for storage services in which the applicant seeks to establish that it lacks significant market power. It must include the market related to the service for which it proposes to charge market-based rates. The statement must explain why the applicant's method for selecting the geographic markets is appropriate.
- (2) Statement B--product market. This statement must identify the product market or markets for which the applicant seeks to establish that it lacks significant market power. The statement must explain why the particular product definition is appropriate.
- (3) Statement C--the applicant's facilities and services. This statement must describe the applicant's own facilities and services, and those of all parent, subsidiary, or affiliated companies, in the relevant markets identified in Statements A and B in paragraphs (b) (1)

and (2) of this section. The statement must include all pertinent data about the storage facilities and services.

(4) Statement D--competitive alternatives. This statement must describe available alternatives in competition with the applicant in the relevant markets and other competition constraining the applicant's rates in those markets. Such proposed alternatives may include an appropriate combination of other storage, local gas supply, LNG, financial instruments and pipeline capacity. These alternatives must be shown to be reasonably available as a substitute in the area to be served soon enough, at a price low enough, and with a quality high enough to be a reasonable alternative to the applicant's services. Capacity (transportation, storage, LNG, or production) owned or controlled by the applicant and affiliates of the applicant in the relevant market shall be clearly and fully identified and may not be considered as alternatives competing with the applicant. Rather, the capacity of an applicant's affiliates is to be included in the market share calculated for the applicant. To the extent available, the statement must include all pertinent data about storage or other alternatives and other constraining competition.

(5) Statement E--potential competition. This statement must describe potential competition in the relevant markets. To the extent available, the statement must include data about the potential competitors, including their costs, and their distance in miles from the applicant's facilities and major consuming markets. This statement must also describe any relevant barriers to entry and the applicant's assessment of whether ease of entry is an effective counter to attempts to exercise market power in the relevant markets.

(6) Statement F--maps. This statement must consist of maps showing the applicant's principal facilities, pipelines to which the applicant intends to interconnect and other pipelines within the area to be served, the direction of flow of each line, the location of

the alternatives to the applicant's service offerings, including their distance in miles from the applicant's facility. The statement must include a general system map and maps by geographic markets. The information required by this statement may be on separate pages.

(7) Statement G—market-power measures. This statement must set forth the calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the applicant's market share, inclusive of affiliated service offerings, in the markets to be served. The statement must also set forth the calculation of other market-power measures relied on by the applicant. The statement must include complete particulars about the applicant's calculations.

(8) Statement H--other factors. This statement must describe any other factors that bear on the issue of whether the applicant lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) Statement I--prepared testimony. This statement must include the proposed testimony in support of the application and will serve as the applicant's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

The regulation at 18 CFR 284.505(a), requires: (1) a demonstration that market-based rates are in the public interest and necessary to encourage the construction of storage capacity in an area needing storage services, and (2) an explanation of what means the storage service provider will use to protect customers from the potential exercise of market power.

### **Market Based-Rates – Notice of Change in Circumstances**

The Commission's regulations at 18 CFR 284.504 (b) provide that a storage service provider granted the authority to charge market-based rates is required to notify the Commission within 10 days of acquiring knowledge of significant change occurring in its market power status. The notification should include a detailed description of the new facilities/services and their relationship to the storage service provider. Significant changes include: (1) The storage provider expanding its storage capacity beyond the amount authorized; (2) The storage provider acquiring transportation facilities or additional storage capacity; (3) An affiliate providing storage or transportation services in the same market area; and (4) The storage provider or an affiliate acquiring an interest in or is acquired by an interstate pipeline.

### **Code of Conduct Record Retention**

The Commission's regulations at 18 CFR 284.288(b) and 284.403(b), respectively, impose a record retention requirement contained in a Code of Conduct applicable to: (1) interstate pipelines that provide unbundled natural gas sales service,<sup>1</sup> and (2) persons who are not interstate pipelines and whose sales of natural gas are authorized by the "automatic" blanket marketing certificate granted by operation of 18 CFR 284.402.<sup>2</sup> Any entity fitting one of those descriptions must retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

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<sup>1</sup> As defined at 18 CFR 284.282(c), unbundled sales service is gas sales service that is sold separately from transportation service.

<sup>2</sup> The regulation at section 284.402(a) provides that any person who is not an interstate pipeline is granted a blanket certificate of public convenience and necessity, pursuant to section 7 of the NGA, that authorizes the certificate holder to make sales for resale of natural gas at negotiated rates in interstate commerce. Section 2(1) of the NGA (15 U.S.C. 717a(1)) defines a "person" to include an individual or corporation.



FERC uses these records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with 18 CFR 1c.1 (“Prohibition of Natural Gas Market Manipulation”) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission would have difficulty performing its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders. The Code of Conduct Record Retention burden<sup>3</sup> associated with the FERC-549 includes both labor<sup>4</sup> and storage costs.

*Type of Respondents:* Jurisdictional interstate and intrastate natural gas pipelines.

*Estimate of Annual Burden*<sup>5</sup>: The Commission estimates the annual burden and labor costs for the information collection as follows:

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<sup>3</sup> 18 CFR 284.288(b) and 18 CFR 284.403(b)

<sup>4</sup> The \$35.83 hourly cost figure comes from the average cost (wages plus benefits) of a file clerk (Occupation Code 43-4071) as posted on the BLS website ([http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm)).

<sup>5</sup> The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

FERC-549: Estimated Labor Costs for NGPA Section 311 Transactions, NGA Blanket Certificate Transaction, and Record Retention						
	A Number of Respondents	B Annual Number of Responses per Respondent	C Total Number of Responses (Column A x Column B)	D Average Burden Hrs. & Cost (\$)⁶ Per Response	E Total Annual Burden Hours & Total Annual Cost (\$) (Column C x Column D)	F Cost per Respondent (\$) (Column E ÷ Column A)
Transportation by Pipelines	43	2	86	50 hrs.; \$4,550	4,300 hrs.; \$391,300	\$9,100
MBR - Initial Approval	1	1	1	350 hrs.; \$31,850	350 hrs.; \$31,850	\$31,850
MBR - Change in Circumstances⁷	5	1	5	75 hrs.; \$6,825	375 hrs.; \$6,825	\$1,365
Record Retention	299	1	299	1 hr.; \$38.71	299 hrs.; \$11,574.29	\$38.71
Totals	348		391		5,324 hrs.; \$441,549	

**Storage Cost:**<sup>8</sup> In addition to the labor costs for record retention, non-labor costs of record retention and storage are estimated as follows:

- Paper storage costs (using an estimate of 12.5 cubic feet x \$6.46 per cubic foot):  
\$80.75 per respondent annually. Total annual paper storage cost to industry (\$80.75 x 299 respondents): \$24,144.25. This estimate assumes that a respondent stores 12.5

<sup>6</sup> For the information collection activities labeled “Transportation by Pipelines,” “MBR – Initial Approval,” and “MBR – Change in Circumstances,” Commission staff estimates that respondents’ hourly labor cost is approximated by the Commission’s average hourly cost (for wages and benefits) for 2022, or \$91.00 per hour.

For the information collection activity labeled “Record Retention,” Commission staff estimates that respondents’ hourly labor cost is \$38.71 (for wages and benefits), based on \$27.24 (the mean hourly wage for an information and record clerk, Occupation Code 43-4000 for Utilities as posted at [http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm)), plus \$11.47 (the average hourly cost for benefits for private industry, as posted at <https://www.bls.gov/news.release/pdf/ecec.pdf>).

<sup>7</sup> This new row was added to account for the differences between initial MBR filings and filings pertaining to a change in circumstances.

<sup>8</sup> Each of the 299 entities is assumed to have both paper and electronic record retention. Internal analysis assumes 50 percent paper storage and 50 percent electronic storage.

cubic feet of paper. We expect that this estimate should trend downward over time as more companies move away from paper storage and rely more heavily on electronic storage.

- Electronic storage costs: \$3.18 per respondent annually. Total annual electronic storage cost to industry ( $\$3.18 \times 299$  respondents): \$950.82. This calculation estimates storage of approximately 200 MB per year with a cost of \$3.18.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 30, 2022.

**Kimberly D. Bose,**

*Secretary.*

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